

AMENDED IN ASSEMBLY MAY 31, 2006

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY MAY 1, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2922

Introduced by Assembly Member Jones

February 24, 2006

~~An act to amend Sections 33333.10, 33334.2, 33334.3, 33334.4, 33334.6, and 33413 of, and to add Section 33334.2b to of, the Health and Safety~~ *An act to amend Section 33334.3 of the Health and Safety Code, relating to redevelopment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2922, as amended, Jones. Redevelopment: Low and Moderate Income Housing Fund.

Existing law authorizes redevelopment agencies to pay the principal of, and interest on, indebtedness incurred to finance or refinance redevelopment, from a portion of property tax revenues diverted from other taxing agencies. The portion of taxes diverted is the amount attributable to increases in assessed valuation of property in the redevelopment project area subsequent to establishment thereof. This method of financing is commonly known as "tax increment" financing and is specifically authorized by Section 16 of Article XVI of the California Constitution.

Existing law requires a redevelopment agency to use at least 20% of its tax increment revenues for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable cost to persons and families of low or

moderate income and lower, very low, and extremely low income households that are occupied by these persons and families unless the agency makes certain findings. These funds are required to be deposited in a separate Low and Moderate Income Housing Fund.

~~This bill would increase to 35% the amount a redevelopment agency would be required to set aside for its low- and moderate-income housing obligation.~~

Existing law requires covenants and restrictions on the affordability of all new or substantially rehabilitated housing units developed or assisted with funds required to be used for low- and moderate-income housing to be recorded in the office of the county recorder and makes those covenants and restrictions enforceable by the agency or the community.

This bill would make the covenants and restrictions enforceable by any interested party, including a person or family of low or moderate income that is eligible to reside in the property and would require the agency to obtain and maintain a copy of the covenants and restrictions.

~~Existing law requires a redevelopment agency to replace dwelling units housing persons and families of low- or moderate-income that are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance is provided by the agency.~~

~~This bill would subject the agency to the replacement requirement when dwelling units housing persons and families of low or moderate income are destroyed or removed from that market by the agency or the community, as defined, as part of a redevelopment project. The bill would require that the displaced household be presumed to have been extremely low income if the income level of the displaced household is not verified or known by the agency.~~

~~Existing law requires a redevelopment agency to expend, over the duration of its redevelopment implementation plan, the moneys in the Low and Moderate Income Housing Fund to assist housing for persons of low income and housing for persons of very low income in at least the same proportion as the number of housing units needed for each of those income groups bears to the total number of units needed for persons of moderate, low, and very low income within the community.~~

~~This bill would instead require that at least 25% of the units made available by an agency with moneys in the Low and Moderate Income Housing Fund be affordable to, and occupied by, extremely low income persons and that at least another 25% be affordable to, and occupied by, very low income persons.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 33333.10 of the Health and Safety Code~~
2 ~~is amended to read:~~
3 ~~33333.10. (a) (1) Notwithstanding the time limits in~~
4 ~~subdivisions (a) and (b) of Section 33333.6, an agency that~~
5 ~~adopted a redevelopment plan on or before December 31, 1993,~~
6 ~~may, pursuant to this section, amend that plan to extend the time~~
7 ~~limit on effectiveness of the plan for up to 10 additional years~~
8 ~~beyond the limit allowed by subdivision (a) of Section 33333.6.~~
9 ~~(2) In addition, the agency may, pursuant to this section,~~
10 ~~amend that plan to extend the time limit on the payment of~~
11 ~~indebtedness and receipt of property taxes to be not more than 10~~
12 ~~years from the termination of the effectiveness of the~~
13 ~~redevelopment plan as that time limit has been amended pursuant~~
14 ~~to paragraph (1).~~
15 ~~(b) A redevelopment plan may be amended pursuant to~~
16 ~~subdivision (a) only after the agency finds, based on substantial~~
17 ~~evidence, that both of the following conditions exist:~~
18 ~~(1) Significant blight remains within the project area.~~
19 ~~(2) This blight cannot be eliminated without extending the~~
20 ~~effectiveness of the plan and the receipt of property taxes.~~
21 ~~(c) As used in this section:~~
22 ~~(1) "Blight" has the same meaning as that term is given in~~
23 ~~Section 33030.~~
24 ~~(2) "Significant" means important and of a magnitude to~~
25 ~~warrant agency assistance.~~
26 ~~(3) "Necessary and essential parcels" means parcels that are~~
27 ~~not blighted but are so necessary and essential to the elimination~~
28 ~~of the blight that these parcels should be included within the~~
29 ~~portion of the project area in which tax increment funds may be~~
30 ~~spent. "Necessary and essential parcels" are (A) parcels that are~~

1 adjacent to one or more blighted parcels that are to be assembled
2 in order to create a parcel of adequate size given present
3 standards and market conditions, and (B) parcels that are
4 adjacent or near parcels that are blighted on which it is necessary
5 to construct a public improvement to eliminate the blight.

6 (d) For purposes of this section, significant blight can exist in
7 a project area even though blight is not prevalent in a project
8 area. The report submitted to the legislative body pursuant to
9 Section 33352 shall identify on a map the portion of the project
10 area in which significant blight remains.

11 (e) After the limit on the payment of indebtedness and receipt
12 of property taxes that would have taken effect but for the
13 amendment pursuant to this section, except for funds deposited in
14 the Low and Moderate Income Housing Fund pursuant to Section
15 33334.2 or 33334.6, the agency shall spend tax increment funds
16 only within the portion of the project area that has been identified
17 in the report adopted pursuant to Section 33352 as the area
18 containing blighted parcels and necessary and essential parcels.
19 Except as otherwise limited by subdivisions (f) and (g), agencies
20 may continue to spend funds deposited in the Low and Moderate
21 Income Housing Fund in accordance with this division.

22 (f) (1) Except as otherwise provided in this subdivision, after
23 the limit on the payment of indebtedness and receipt of property
24 taxes that would have taken effect, but for the amendment
25 pursuant to this section, agencies shall only spend moneys from
26 the Low and Moderate Income Housing Fund for the purpose of
27 increasing, improving, and preserving the community's supply of
28 housing at affordable housing cost to persons and families of
29 low, very low, or extremely low income, as defined in Sections
30 50079.5, 50093, 50105, and 50106. During this period, an agency
31 that has adopted an amendment pursuant to subdivision (a) may
32 use moneys from the Low and Moderate Income Housing Fund
33 for the purpose of increasing, improving, and preserving housing
34 at affordable housing cost to persons and families of moderate
35 income as defined in Section 50093. However, this amount shall
36 not exceed, in a five-year period, the amount of moneys from the
37 Low and Moderate Income Housing Fund that are used to
38 increase, improve, and preserve housing at affordable housing
39 cost to persons and families of extremely low income, as defined
40 in Section 50106. In no case shall the amount expended for

1 ~~housing for persons and families of moderate income exceed 15~~
2 ~~percent of the annual amount deposited in the Low and Moderate~~
3 ~~Income Housing Fund during a five-year period and the number~~
4 ~~of housing units affordable to moderate-income persons shall not~~
5 ~~exceed the number of housing units affordable to extremely low~~
6 ~~income persons.~~

7 ~~(2) Commencing with the first fiscal year that commences~~
8 ~~after the date of the adoption of an amendment pursuant to~~
9 ~~subdivision (a) and until the limit on the payment of indebtedness~~
10 ~~and receipt of property taxes that would have taken effect but for~~
11 ~~the amendment pursuant to this section, an agency that has~~
12 ~~adopted an amendment pursuant to subdivision (a) may use~~
13 ~~moneys from the Low and Moderate Income Housing Fund for~~
14 ~~the purpose of increasing, improving, and preserving housing at~~
15 ~~affordable housing cost to persons and families of moderate~~
16 ~~income as defined in Section 50093. However, this amount shall~~
17 ~~not exceed, in a five-year period, 15 percent of the amount of~~
18 ~~moneys deposited in the Low and Moderate Income Housing~~
19 ~~Fund during that five-year period and shall only be used to assist~~
20 ~~housing projects in which no less than 49 percent of the units are~~
21 ~~affordable to and occupied by persons and families of low, very~~
22 ~~low, or extremely low income. An agency may spend an~~
23 ~~additional amount of moneys in the same or other housing~~
24 ~~projects to assist housing units affordable to and occupied by~~
25 ~~moderate-income persons. However, this amount shall not~~
26 ~~exceed the lesser of: the amount of moneys spent to increase,~~
27 ~~improve, and preserve housing at affordable housing cost to~~
28 ~~persons and families of extremely low income as defined in~~
29 ~~Section 50106, or 5 percent of the moneys deposited in the Low~~
30 ~~and Moderate Income Housing Fund during that five-year period.~~

31 ~~(g) (1) Except as provided in paragraph (2) or (3),~~
32 ~~commencing with the first fiscal year that commences after the~~
33 ~~date of adoption of an amendment pursuant to subdivision (a),~~
34 ~~not less than 30 percent, or 35 percent commencing with the~~
35 ~~2007-08 fiscal year, of all taxes that are allocated to the agency~~
36 ~~pursuant to Section 33670 from the redevelopment project area~~
37 ~~so amended shall be deposited into that project's Low and~~
38 ~~Moderate Income Housing Fund for the purposes specified in~~
39 ~~subdivision (f).~~

~~(2) In any fiscal year, the agency may deposit less than the amount required by paragraph (1), but not less than the amount required by Section 33334.2 or 33334.6, into the Low and Moderate Income Housing Fund if the agency finds that the difference between the amount deposited and the amount required by paragraph (1) is necessary to make principal and interest payments during that fiscal year on bonds sold by the agency to finance or refinance the redevelopment project prior to six months before the date of adoption of the amendment pursuant to subdivision (a). Bonds sold by the agency prior to six months before the date of the adoption of the amendment pursuant to subdivision (a) may only be refinanced, refunded, or restructured after the date of the amendment pursuant to subdivision (a). However, for purposes of this section, bonds refinanced, refunded, or restructured after the date of the amendment pursuant to subdivision (a) may only be treated as if sold on the date the original bonds were sold if (A) the net proceeds were used to refinance the original bonds, (B) there is no increase in the amount of principal at the time of refinancing, restructuring, or refunding, and (C) the time during which the refinanced indebtedness is to be repaid does not exceed the date on which the existing indebtedness would have been repaid.~~

~~(3) No later than 120 days prior to depositing less than the amount required by paragraph (1) into the Low and Moderate Income Housing Fund, the agency shall adopt, by resolution after a noticed public hearing, a finding that the difference between the amount allocated and the amount required by paragraph (1) is necessary to make payments on bonds sold by the agency to finance or refinance the redevelopment project and identified in the preliminary report adopted pursuant to paragraph (9) of subdivision (c) of Section 33333.11, and specifying the amount of principal remaining on the bonds, the amount of annual payments, and the date on which the indebtedness will be repaid. Notice of the time and place of the public hearing shall be published in a newspaper of general circulation once a week for at least two successive weeks prior to the public hearing. The agency shall make available to the public the proposed resolution no later than the time of the publication of the first notice of the public hearing. A copy of the resolution shall be transmitted to~~

1 the Department of Housing and Community Development within
2 10 days after adoption.

3 ~~(4) Notwithstanding paragraph (1), an agency that sells bonds~~
4 ~~on or after the date of adoption of an amendment pursuant to~~
5 ~~subdivision (a), the repayment of which is to be made from taxes~~
6 ~~allocated to the agency pursuant to Section 33670 from the~~
7 ~~project so amended, may elect to subordinate up to 16 $\frac{2}{3}$ percent~~
8 ~~of its annual 30-percent, or 35 percent commencing in the~~
9 ~~2007-08 fiscal year, Low and Moderate Income Housing Fund~~
10 ~~deposit obligation to the payment of debt service on the bonds. If~~
11 ~~the agency makes that election and in any year the agency has~~
12 ~~insufficient tax-increment revenue available to pay debt service~~
13 ~~on the bonds to which the funds from the Low and Moderate~~
14 ~~Income Housing Fund are subordinated, the agency may deposit~~
15 ~~less than the full 100 percent of its annual 30-percent, or 35~~
16 ~~percent commencing in the 2007-08 fiscal year, Low and~~
17 ~~Moderate Income Housing Fund obligation but only to the extent~~
18 ~~necessary to pay that debt service and in no event shall less than~~
19 ~~83 $\frac{1}{3}$ percent of that obligation be deposited into the Low and~~
20 ~~Moderate Income Housing Fund for that year. The difference~~
21 ~~between the amount that is actually deposited in the Low and~~
22 ~~Moderate Income Housing Fund and the full 100 percent of the~~
23 ~~agency's 30-percent, or 35 percent commencing in the 2007-08~~
24 ~~fiscal year, Low and Moderate Income Housing Fund deposit~~
25 ~~obligation shall constitute a deficit in the Low and Moderate~~
26 ~~Income Housing Fund subject to repayment pursuant to~~
27 ~~paragraph (5).~~

28 ~~(5) If, pursuant to paragraph (2) or (4), the agency deposits~~
29 ~~less than 30 percent, or 35 percent commencing in the 2007-08~~
30 ~~fiscal year, of the taxes allocated to the agency pursuant to~~
31 ~~Section 33670 in any fiscal year in the Low and Moderate~~
32 ~~Income Housing Fund, the amount equal to the difference~~
33 ~~between 30 percent, or 35 percent commencing in the 2007-08~~
34 ~~fiscal year, of the taxes allocated to the agency pursuant to~~
35 ~~Section 33670 for each affected redevelopment project area and~~
36 ~~the amount actually deposited in the Low and Moderate Income~~
37 ~~Housing Fund for that fiscal year shall be established as a deficit~~
38 ~~in the Low and Moderate Income Housing Fund. Any new tax~~
39 ~~increment funds not encumbered pursuant to paragraph (2) or (4)~~
40 ~~shall be utilized to reduce or eliminate the deficit prior to~~

1 entering into any new contracts, commitments, or indebtedness.
2 The obligations imposed by this section are hereby declared to be
3 an indebtedness of the redevelopment project to which they
4 relate, payable from taxes allocated to the agency pursuant to
5 Section 33670 and, notwithstanding any other provision of law,
6 shall constitute an indebtedness of the agency with respect to the
7 redevelopment project, and the agency shall continue to receive
8 allocations of taxes pursuant to Section 33670 until the deficit is
9 paid in full.

10 (h) An agency may not amend its redevelopment plan pursuant
11 to this section unless the agency first adopts a resolution that
12 finds, based on substantial evidence, all of the following:

13 (1) The community has adopted a housing element that the
14 department has determined pursuant to Section 65585 of the
15 Government Code to be in substantial compliance with the
16 requirements of Article 10.6 (commencing with Section 65580)
17 of Chapter 3 of Division 1 of Title 7 of the Government Code, or
18 if applicable, an eligible city or county within the jurisdiction of
19 the San Diego Association of Governments has adopted a
20 self-certification of compliance with its adopted housing element
21 pursuant to Section 65585.1 of the Government Code.

22 (2) During the three fiscal years prior to the year in which the
23 amendment is adopted, the agency has not been included in the
24 report sent by the Controller to the Attorney General pursuant to
25 subdivision (b) of Section 33080.8 as an agency that has a “major
26 violation” pursuant to Section 33080.8.

27 (3) After a written request by the agency and provision of the
28 information requested by the department, the department has
29 issued a letter to the agency, confirming that the agency has not
30 accumulated an excess surplus in its Low and Moderate Income
31 Housing Fund. As used in this section, “excess surplus” has the
32 same meaning as that term is defined in Section 33334.12. The
33 department shall develop a methodology to collect information
34 required by this section. Information requested by the department
35 shall include a certification by the agency’s independent auditor
36 on the status of excess surplus and submittal of data for the
37 department to verify the status of excess surplus. The
38 independent auditor shall make the required certification based
39 on the Controller’s office guidelines which shall include the
40 methodology prescribed by the department pursuant to

1 subparagraph (D) of paragraph (3) of subdivision (g) of Section
2 33334.12. If the department does not respond to the written
3 request of the agency for this determination within 90 days after
4 receipt of the written request, compliance with this requirement
5 shall be deemed confirmed.

6 (i) Each redevelopment plan that has been adopted prior to
7 January 1, 1976, that is amended pursuant to subdivision (a) shall
8 also be amended at the same time to make subdivision (b) of
9 Section 33413 applicable to the redevelopment plan in
10 accordance with paragraph (1) of subdivision (d) of Section
11 33413.

12 (j) The amendment to the redevelopment plan authorized
13 pursuant to this section shall be made by ordinance pursuant to
14 Article 12 (commencing with Section 33450). The ordinance
15 shall be subject to referendum as prescribed by law for
16 ordinances of the legislative body.

17 (k) This section shall not apply to a project area that retains its
18 eligibility to incur indebtedness and receive tax increment
19 revenues pursuant to Section 33333.7.

20 (l) The limitations established in the ordinance adopted
21 pursuant to this section shall not be applied to limit allocation of
22 taxes to an agency to the extent required to comply with Section
23 33333.8. In the event of a conflict between these limitations and
24 the obligations under Section 33333.8, the limitation established
25 in the ordinance shall be suspended pursuant to Section 33333.8.

26 SEC. 2. Section 33334.2 of the Health and Safety Code is
27 amended to read:

28 33334.2. (a) Not less than 20 percent of all taxes that are
29 allocated to the agency pursuant to Section 33670 shall be used
30 by the agency for the purposes of increasing, improving, and
31 preserving the community's supply of low- and moderate-income
32 housing available at affordable housing cost, as defined by
33 Section 50052.5, to persons and families of low or moderate
34 income, as defined in Section 50093, lower income households,
35 as defined by Section 50079.5, very low income households, as
36 defined in Section 50105, and extremely low income households,
37 as defined by Section 50106, that is occupied by these persons
38 and families, unless one of the following findings is made
39 annually by resolution:

1 ~~(1) (A) That no need exists in the community to improve,~~
2 ~~increase, or preserve the supply of low- and moderate-income~~
3 ~~housing, including housing for very low income households in a~~
4 ~~manner that would benefit the project area and that this finding is~~
5 ~~consistent with the housing element of the community's general~~
6 ~~plan required by Article 10.6 (commencing with Section 65580)~~
7 ~~of Chapter 3 of Division 1 of Title 7 of the Government Code,~~
8 ~~including its share of the regional housing needs of very low~~
9 ~~income households and persons and families of low or moderate~~
10 ~~income.~~

11 ~~(B) This finding shall only be made if the housing element of~~
12 ~~the community's general plan demonstrates that the community~~
13 ~~does not have a need to improve, increase, or preserve the supply~~
14 ~~of low- and moderate-income housing available at affordable~~
15 ~~housing cost to persons and families of low or moderate income~~
16 ~~and to very low income households. This finding shall only be~~
17 ~~made if it is consistent with the planning agency's annual report~~
18 ~~to the legislative body on implementation of the housing element~~
19 ~~required by subdivision (b) of Section 65400 of the Government~~
20 ~~Code. No agency of a charter city shall make this finding unless~~
21 ~~the planning agency submits the report pursuant to subdivision~~
22 ~~(b) of Section 65400 of the Government Code. This finding shall~~
23 ~~not take effect until the agency has complied with subdivision (b)~~
24 ~~of this section.~~

25 ~~(2) (A) That some stated percentage less than 20 percent of~~
26 ~~the taxes that are allocated to the agency pursuant to Section~~
27 ~~33670 is sufficient to meet the housing needs of the community,~~
28 ~~including its share of the regional housing needs of persons and~~
29 ~~families of low- or moderate-income and very low income~~
30 ~~households, and that this finding is consistent with the housing~~
31 ~~element of the community's general plan required by Article 10.6~~
32 ~~(commencing with Section 65580) of Chapter 3 of Division 1 of~~
33 ~~Title 7 of the Government Code.~~

34 ~~(B) This finding shall only be made if the housing element of~~
35 ~~the community's general plan demonstrates that a percentage of~~
36 ~~less than 20 percent will be sufficient to meet the community's~~
37 ~~need to improve, increase, or preserve the supply of low- and~~
38 ~~moderate-income housing available at affordable housing cost to~~
39 ~~persons and families of low or moderate income and to very low~~
40 ~~income households. This finding shall only be made if it is~~

1 consistent with the planning agency's annual report to the
2 legislative body on implementation of the housing element
3 required by subdivision (b) of Section 65400 of the Government
4 Code. No agency of a charter city shall make this finding unless
5 the planning agency submits the report pursuant to subdivision
6 (b) of Section 65400 of the Government Code. This finding shall
7 not take effect until the agency has complied with subdivision (b)
8 of this section.

9 (C) For purposes of making the findings specified in this
10 paragraph and paragraph (1), the housing element of the general
11 plan of a city, county, or city and county shall be current, and
12 shall have been determined by the department pursuant to
13 Section 65585 to be in substantial compliance with Article 10.6
14 (commencing with Section 65580) of Chapter 3 of Division 1 of
15 Title 7 of the Government Code.

16 (3) (A) That the community is making a substantial effort to
17 meet its existing and projected housing needs, including its share
18 of the regional housing needs, with respect to persons and
19 families of low and moderate income, particularly very low
20 income households, as identified in the housing element of the
21 community's general plan required by Article 10.6 (commencing
22 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
23 Government Code, and that this effort, consisting of direct
24 financial contributions of local funds used to increase and
25 improve the supply of housing affordable to, and occupied by,
26 persons and families of low or moderate income and very low
27 income households is equivalent in impact to the funds otherwise
28 required to be set aside pursuant to this section. In addition to any
29 other local funds, these direct financial contributions may include
30 federal or state grants paid directly to a community and which the
31 community has the discretion of using for the purposes for which
32 moneys in the Low and Moderate Income Housing Fund may be
33 used. The legislative body shall consider the need that can be
34 reasonably foreseen because of displacement of persons and
35 families of low or moderate income or very low income
36 households from within, or adjacent to, the project area, because
37 of increased employment opportunities, or because of any other
38 direct or indirect result of implementation of the redevelopment
39 plan. No finding under this subdivision may be made until the
40 community has provided or ensured the availability of

1 replacement dwelling units as defined in Section 33411.2 and
2 until it has complied with Article 9 (commencing with Section
3 33410).

4 (B) In making the determination that other financial
5 contributions are equivalent in impact pursuant to this
6 subdivision, the agency shall include only those financial
7 contributions that are directly related to programs or activities
8 authorized under subdivision (e).

9 (C) The authority for making the finding specified in this
10 paragraph shall expire on June 30, 1993, except that the
11 expiration shall not be deemed to impair contractual obligations
12 to bondholders or private entities incurred prior to May 1, 1991,
13 and made in reliance on the provisions of this paragraph.
14 Agencies that make this finding after June 30, 1993, shall show
15 evidence that the agency entered into the specific contractual
16 obligation with the specific intention of making a finding under
17 this paragraph in order to provide sufficient revenues to pay off
18 the indebtedness.

19 (b) Within 10 days following the making of a finding under
20 either paragraph (1) or (2) of subdivision (a), the agency shall
21 send the Department of Housing and Community Development a
22 copy of the finding, including the factual information supporting
23 the finding and other factual information in the housing element
24 that demonstrates that either (1) the community does not need to
25 increase, improve, or preserve the supply of housing for low- and
26 moderate-income households, including very low income
27 households, or (2) a percentage less than 20 percent will be
28 sufficient to meet the community's need to improve, increase,
29 and preserve the supply of housing for low- and
30 moderate-income households, including very low income
31 households. Within 10 days following the making of a finding
32 under paragraph (3) of subdivision (a), the agency shall send the
33 Department of Housing and Community Development a copy of
34 the finding, including the factual information supporting the
35 finding that the community is making a substantial effort to meet
36 its existing and projected housing needs. Agencies that make this
37 finding after June 30, 1993, shall also submit evidence to the
38 department of its contractual obligations with bondholders or
39 private entities incurred prior to May 1, 1991, and made in
40 reliance on this finding.

1 ~~(e) In any litigation to challenge or attack a finding made~~
2 ~~under paragraph (1), (2), or (3) of subdivision (a), the burden~~
3 ~~shall be upon the agency to establish that the finding is supported~~
4 ~~by substantial evidence in light of the entire record before the~~
5 ~~agency. If an agency is determined by a court to have knowingly~~
6 ~~misrepresented any material facts regarding the community's~~
7 ~~share of its regional housing need for low- and moderate-income~~
8 ~~housing, including very low income households, or the~~
9 ~~community's production record in meeting its share of the~~
10 ~~regional housing need pursuant to the report required by~~
11 ~~subdivision (b) of Section 65400 of the Government Code, the~~
12 ~~agency shall be liable for all court costs and plaintiff's attorney's~~
13 ~~fees, and shall be required to allocate not less than 25 percent of~~
14 ~~the agency's tax increment revenues to its Low and Moderate~~
15 ~~Income Housing Fund in each year thereafter.~~

16 ~~(d) This section does not relieve any other public entity or~~
17 ~~entity with the power of eminent domain of any legal obligations~~
18 ~~for replacement or relocation housing arising out of its activities.~~

19 ~~(e) In carrying out the purposes of this section, the agency may~~
20 ~~exercise any or all of its powers for the construction,~~
21 ~~rehabilitation, or preservation of affordable housing for~~
22 ~~extremely low, very low, low- and moderate-income persons or~~
23 ~~families, including the following:~~

24 ~~(1) Acquire real property or building sites subject to Section~~
25 ~~33334.16.~~

26 ~~(2) Improve real property or building sites with onsite or~~
27 ~~offsite improvements, but only if both (A) the improvements are~~
28 ~~part of the new construction or rehabilitation of affordable~~
29 ~~housing units for low- or moderate-income persons that are~~
30 ~~directly benefited by the improvements, and are a reasonable and~~
31 ~~fundamental component of the housing units, and (B) the agency~~
32 ~~requires that the units remain available at affordable housing cost~~
33 ~~to, and occupied by, persons and families of extremely low, very~~
34 ~~low, low, or moderate income for the same time period and in the~~
35 ~~same manner as provided in subdivision (c) and paragraph (2) of~~
36 ~~subdivision (f) of Section 33334.3.~~

37 ~~If the newly constructed or rehabilitated housing units are part~~
38 ~~of a larger project and the agency improves or pays for onsite or~~
39 ~~offsite improvements pursuant to the authority in this~~
40 ~~subdivision, the agency shall pay only a portion of the total cost~~

1 of the onsite or offsite improvement. The maximum percentage
2 of the total cost of the improvement paid for by the agency shall
3 be determined by dividing the number of housing units that are
4 affordable to low- or moderate-income persons by the total
5 number of housing units, if the project is a housing project, or by
6 dividing the cost of the affordable housing units by the total cost
7 of the project, if the project is not a housing project.

8 ~~(3) Donate real property to private or public persons or~~
9 ~~entities.~~

10 ~~(4) Finance insurance premiums pursuant to Section 33136.~~

11 ~~(5) Construct buildings or structures.~~

12 ~~(6) Acquire buildings or structures.~~

13 ~~(7) Rehabilitate buildings or structures.~~

14 ~~(8) Provide subsidies to, or for the benefit of, extremely low~~
15 ~~income households, as defined by Section 50106, very low~~
16 ~~income households, as defined by Section 50105, lower income~~
17 ~~households, as defined by Section 50079.5, or persons and~~
18 ~~families of low or moderate income, as defined by Section~~
19 ~~50093, to the extent those households cannot obtain housing at~~
20 ~~affordable costs on the open market. Housing units available on~~
21 ~~the open market are those units developed without direct~~
22 ~~government subsidies.~~

23 ~~(9) Develop plans, pay principal and interest on bonds, loans,~~
24 ~~advances, or other indebtedness, or pay financing or carrying~~
25 ~~charges.~~

26 ~~(10) Maintain the community's supply of mobilehomes.~~

27 ~~(11) Preserve the availability to lower income households of~~
28 ~~affordable housing units in housing developments that are~~
29 ~~assisted or subsidized by public entities and that are threatened~~
30 ~~with imminent conversion to market rates.~~

31 ~~(f) The agency may use these funds to meet, in whole or in~~
32 ~~part, the replacement housing provisions in Section 33413.~~
33 ~~However, nothing in this section shall be construed as limiting in~~
34 ~~any way the requirements of that section.~~

35 ~~(g) (1) The agency may use these funds inside or outside the~~
36 ~~project area. The agency may only use these funds outside the~~
37 ~~project area upon a resolution of the agency and the legislative~~
38 ~~body that the use will be of benefit to the project. The~~
39 ~~determination by the agency and the legislative body shall be~~
40 ~~final and conclusive as to the issue of benefit to the project area.~~

~~The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.~~

~~(2) (A) The Contra Costa County Redevelopment Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment Project area. The agency may only use these funds outside the project area upon a resolution of the agency and board of supervisors determining that the use will be of benefit to the project area. In addition, the agency may use these funds within the incorporated limits of the City of Walnut Creek only if the agency and the board of supervisors find all of the following:~~

~~(i) Both the County of Contra Costa and the City of Walnut Creek have adopted and are implementing complete and current housing elements of their general plans that the Department of Housing and Community Development has determined to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.~~

~~(ii) The development to be funded shall not result in any residential displacement from the site where the development is to be built.~~

~~(iii) The development to be funded shall not be constructed in an area that currently has more than 50 percent of its population comprised of racial minorities or low-income families.~~

~~(iv) The development to be funded shall allow construction of affordable housing closer to a rapid transit station than could be constructed in the unincorporated territory outside the Pleasant Hill BART Station Area Redevelopment Project.~~

~~(B) If the agency uses these funds within the incorporated limits of the City of Walnut Creek, all of the following requirements shall apply:~~

~~(i) The funds shall be used only for the acquisition of land for, and the design and construction of, the development of housing~~

1 containing units affordable to, and occupied by, low- and
2 moderate-income persons.

3 (ii) If less than all the units in the development are affordable
4 to, and occupied by, low- or moderate-income persons, any
5 agency assistance shall not exceed the amount needed to make
6 the housing affordable to, and occupied by, low- or
7 moderate-income persons.

8 (iii) The units in the development that are affordable to, and
9 occupied by, low- or moderate-income persons shall remain
10 affordable for a period of at least 55 years.

11 (iv) The agency and the City of Walnut Creek shall determine,
12 if applicable, whether Article XXXIV of the California
13 Constitution permits the development.

14 (h) The Legislature finds and declares that expenditures or
15 obligations incurred by the agency pursuant to this section shall
16 constitute an indebtedness of the project.

17 (i) The requirements of this section shall only apply to taxes
18 allocated to a redevelopment agency for which a final
19 redevelopment plan was adopted between January 1, 1977, and
20 December 31, 2006, or for any area that is added to a project by
21 an amendment to a redevelopment plan, if the amendment was
22 adopted between January 1, 1977, and December 31, 2006. An
23 agency may, by resolution, elect to make all or part of the
24 requirements of this section applicable to any redevelopment
25 project for which a redevelopment plan was adopted prior to
26 January 1, 1977, subject to any indebtedness incurred prior to the
27 election.

28 (j) (1) (A) An action to compel compliance with the
29 requirement of this section or Section 33334.3 to deposit not less
30 than 20 percent of all taxes that are allocated to the agency
31 pursuant to Section 33670 in a Low and Moderate Income
32 Housing Fund shall be commenced within 10 years of the alleged
33 violation. A cause of action for a violation accrues on the last day
34 of the fiscal year in which the funds were required to be
35 deposited in the Low and Moderate Income Housing Fund.

36 (B) An action to compel compliance with the requirement of
37 this section or Section 33334.6 that money deposited in the Low
38 and Moderate Income Housing Fund be used by the agency for
39 purposes of increasing, improving, and preserving the
40 community's supply of low- and moderate-income housing

1 available at affordable housing cost shall be commenced within
2 10 years of the alleged violation. A cause of action for a violation
3 accrues on the date of the actual expenditure of the funds.

4 (C) An agency found to have deposited less into the Low and
5 Moderate Income Housing Fund than mandated by this section or
6 Section 33334.3 or to have spent money from the Low and
7 Moderate Income Housing Fund for purposes other than
8 increasing, improving, and preserving the community's supply of
9 low- and moderate-income housing, as mandated, by this section
10 or Section 33334.6 shall repay the funds with interest in one
11 lump sum pursuant to Section 970.4 or 970.5 of the Government
12 Code or may do either of the following:

13 (i) Petition the court under Section 970.6 for repayment in
14 installments.

15 (ii) Repay the portion of the judgment due to the Low and
16 Moderate Income Housing Fund in equal installments over a
17 period of five years following the judgment.

18 (2) Repayment shall not be made from the funds required to be
19 set aside or used for low- and moderate-income housing pursuant
20 to this section.

21 (3) Notwithstanding clauses (i) and (ii) of subparagraph (C) of
22 paragraph (1), all costs, including reasonable attorney fees if
23 included in the judgment, are due and shall be paid upon entry of
24 judgment or order.

25 (4) Except as otherwise provided in this subdivision, Chapter
26 2 (commencing with Section 970) of Part 5 of Division 3.6 of
27 Title 1 of the Government Code for the enforcement of a
28 judgment against a local public entity applies to a judgment
29 against a local public entity that violates this section.

30 (5) This subdivision applies to actions filed on and after
31 January 1, 2006.

32 (6) The limitations period specified in subparagraphs (A) and
33 (B) of paragraph (1) does not apply to a cause of action brought
34 pursuant to Chapter 9 (commencing with Section 860) of Title 10
35 of Part 2 of the Code of Civil Procedure.

36 SEC. 3. Section 33334.2b is added to the Health and Safety
37 Code, to read:

38 33334.2b. (a) Thirty-five percent of all taxes that are
39 allocated to the agency pursuant to Section 33670 shall be set
40 aside in the Low and Moderate Income Housing Fund established

1 pursuant to Section 33334.3, and used by the agency for the
2 purposes of increasing, improving, and preserving the
3 community's supply of low- and moderate-income housing
4 available at affordable housing cost, as defined by Section
5 50052.5, to persons and families of low or moderate income, as
6 defined in Section 50093, lower income households, as defined
7 by Section 50079.5, very low income households, as defined in
8 Section 50105, and extremely low income households, as defined
9 by Section 50106, that is occupied by these persons and families.

10 (b) This section does not relieve any other public entity or
11 entity with the power of eminent domain of any legal obligations
12 for replacement or relocation housing arising out of its activities.

13 (c) In carrying out the purposes of this section, the agency may
14 exercise any or all of its powers for the construction,
15 rehabilitation, or preservation of affordable housing for
16 extremely low, very low, low- and moderate-income persons or
17 families, including the following:

18 (1) Acquire real property or building sites subject to Section
19 33334.16.

20 (2) (A) Improve real property or building sites with onsite or
21 offsite improvements, but only if both of the following
22 requirement are met:

23 (i) The improvements are part of the new construction or
24 rehabilitation of affordable housing units for low- or
25 moderate-income persons that are directly benefitted by the
26 improvements, and are a reasonable and fundamental component
27 of the housing units.

28 (ii) The agency requires that the units remain available at
29 affordable housing cost to, and occupied by, persons and families
30 of extremely low, very low, low, or moderate income for the
31 same time period and in the same manner as provided in
32 subdivision (c) and paragraph (2) of subdivision (f) of Section
33 33334.3.

34 (B) If the newly constructed or rehabilitated housing units are
35 part of a larger mixed income or mixed use project, the agency
36 may only use the Low and Moderate Income Housing Fund to
37 pay for onsite or offsite improvements pursuant to the authority
38 in this subdivision, in proportion to the percent of the project that
39 complies with the section, subdivision (f) of Section 33334.3,
40 and Section 33418. The maximum percentage of the total cost of

1 the improvements paid for by the agency shall be determined by
2 dividing the number of housing units that are affordable to low-
3 or moderate-income persons by the total number of housing
4 units, if the project is entirely residential, or by dividing the cost
5 of the affordable housing units by the total cost of the project, if
6 the project is mixed use.

7 ~~(3) Donate real property to private or public persons or~~
8 ~~entities.~~

9 ~~(4) Finance insurance premiums pursuant to Section 33136.~~

10 ~~(5) Construct buildings or structures.~~

11 ~~(6) Acquire buildings or structures.~~

12 ~~(7) Rehabilitate buildings or structures.~~

13 ~~(8) Provide subsidies to, or for the benefit of, extremely low~~
14 ~~income households, as defined by Section 50106, very low~~
15 ~~income households, as defined by Section 50105, lower income~~
16 ~~households, as defined by Section 50079.5, or persons and~~
17 ~~families of low or moderate income, as defined by Section~~
18 ~~50093, to the extent those households cannot obtain housing at~~
19 ~~affordable costs on the open market. Housing units available on~~
20 ~~the open market are those units developed without direct~~
21 ~~government subsidies.~~

22 ~~(9) Develop plans to issue debt, pay principal and interest on~~
23 ~~bonds, loans, advances, or other indebtedness, or pay financing~~
24 ~~or carrying charges.~~

25 ~~(10) Maintain the community's supply of mobilehomes.~~

26 ~~(11) Preserve the availability to lower income households of~~
27 ~~affordable housing units in housing developments that are~~
28 ~~assisted or subsidized by public entities and that are threatened~~
29 ~~with imminent conversion to market rates.~~

30 ~~(d) The agency may use these funds to meet, in whole or in~~
31 ~~part, the replacement housing provisions in Section 33413. This~~
32 ~~section does not limit in any way the requirements of that~~
33 ~~section.~~

34 ~~(e) The agency may use these funds inside or outside the~~
35 ~~project area. The agency may only use these funds outside the~~
36 ~~project area upon a resolution of the agency and the legislative~~
37 ~~body that the use will be of benefit to the project. The~~
38 ~~determination by the agency and the legislative body shall be~~
39 ~~final and conclusive as to the issue of benefit to the project area.~~
40 ~~The Legislature finds and declares that the provision of~~

1 replacement housing pursuant to Section 33413 is always of
2 benefit to a project. Unless the legislative body finds, before the
3 redevelopment plan is adopted, that the provision of low- and
4 moderate-income housing outside the project area will be of
5 benefit to the project, the project area shall include property
6 suitable for low- and moderate-income housing.

7 (f) The Legislature finds and declares that expenditures or
8 obligations incurred by the agency pursuant to this section
9 constitute an indebtedness of the project.

10 (g) Notwithstanding the requirements of subdivision (a) of
11 Section 33487, requirements of this section shall apply to taxes
12 allocated to a redevelopment agency for which a final
13 redevelopment plan is adopted on or after January 1, 2007, or for
14 any area that is added to a project by an amendment to a
15 redevelopment plan, which amendment is adopted on or after
16 January 1, 2007. An agency may, by resolution, elect to make all
17 or part of the requirements of this section applicable to any
18 redevelopment project for which a redevelopment plan was
19 adopted prior to January 1, 2007, subject to any indebtedness
20 incurred before the election.

21 (h) (1) (A) An action to compel compliance with the
22 requirement of Section 33334.3 to deposit not less than 35
23 percent of all taxes that are allocated to the agency pursuant to
24 Section 33670 in a Low and Moderate Income Housing Fund
25 shall be commenced within 10 years of the alleged violation. A
26 cause of action for a violation accrues on the last day of the fiscal
27 year in which the funds were required to be deposited in the Low
28 and Moderate Income Housing Fund.

29 (B) An action to compel compliance with the requirement of
30 this section or Section 33334.6 that money deposited in the Low
31 and Moderate Income Housing Fund be used by the agency for
32 purposes of increasing, improving, and preserving the
33 community's supply of low- and moderate-income housing
34 available at affordable housing cost shall be commenced within
35 10 years of the alleged violation. A cause of action for a violation
36 accrues on the date of the actual expenditure of the funds.

37 (C) An agency found to have deposited less into the Low and
38 Moderate Income Housing Fund than mandated by Section
39 33334.3 or to have spent money from the Low and Moderate
40 Income Housing Fund for purposes other than increasing,

1 improving, and preserving the community's supply of low- and
2 moderate-income housing, as mandated, by this section or
3 Section 33334.6 shall repay the funds with interest in one lump
4 sum pursuant to Section 970.4 or 970.5 of the Government Code
5 or may do either of the following:

6 (i) Petition the court under Section 970.6 of the Government
7 Code for repayment in installments.

8 (ii) Repay the portion of the judgment due to the Low and
9 Moderate Income Housing Fund in equal installments over a
10 period of five years following the judgment.

11 (2) Repayment shall not be made from the funds required to be
12 set aside or used for low- and moderate-income housing pursuant
13 to this section.

14 (3) Notwithstanding clauses (i) and (ii) of subparagraph (C) of
15 paragraph (1), all costs, including reasonable attorney fees if
16 included in the judgment, are due and shall be paid upon entry of
17 judgment or order.

18 (4) Except as otherwise provided in this subdivision, Chapter
19 2 (commencing with Section 970) of Part 5 of Division 3.6 of
20 Title 1 of the Government Code for the enforcement of a
21 judgment against a local public entity applies to a judgment
22 against a local public entity that violates this section.

23 (5) This subdivision applies to actions filed on and after
24 January 1, 2006.

25 (6) The limitations period specified in subparagraphs (A) and
26 (B) of paragraph (1) does not apply to a cause of action brought
27 pursuant to Chapter 9 (commencing with Section 860) of Title 10
28 of Part 2 of the Code of Civil Procedure.

29 SEC. 4.

30 SECTION 1. Section 33334.3 of the Health and Safety Code
31 is amended to read:

32 33334.3. (a) The funds that are required by Section 33334.2;
33 33334.2b, or 33334.6 to be used for the purposes of increasing,
34 improving, and preserving the community's supply of low- and
35 moderate-income housing shall be held in a separate Low and
36 Moderate Income Housing Fund until used.

37 (b) Any interest earned by the Low and Moderate Income
38 Housing Fund and any repayments or other income to the agency
39 for loans, advances, or grants, of any kind from the Low and
40 Moderate Income Housing Fund shall accrue to and be deposited

1 in, the fund and may only be used in the manner prescribed for
2 the Low and Moderate Income Housing Fund.

3 (c) The moneys in the Low and Moderate Income Housing
4 Fund shall be used to increase, improve, and preserve the supply
5 of low- and moderate-income housing within the territorial
6 jurisdiction of the agency.

7 (d) It is the intent of the Legislature that the Low and
8 Moderate Income Housing Fund be used to the maximum extent
9 possible to defray the costs of production, improvement, and
10 preservation of low- and moderate-income housing and that the
11 amount of money spent for planning and general administrative
12 activities associated with the development, improvement, and
13 preservation of that housing not be disproportionate to the
14 amount actually spent for the costs of production, improvement,
15 or preservation of that housing. The agency shall determine
16 annually that the planning and administrative expenses are
17 necessary for the production, improvement, or preservation of
18 low- and moderate-income housing.

19 (e) (1) Planning and general administrative costs that may be
20 paid with moneys from the Low and Moderate Income Housing
21 Fund are those expenses incurred by the agency that are directly
22 related to the programs and activities authorized under
23 subdivision (e) of Section 33334.2 ~~or subdivision (e) of Section~~
24 ~~33334.2b~~ and are limited to the following:

25 (A) Costs incurred for salaries, wages, and related costs of the
26 agency's staff or for services provided through interagency
27 agreements, and agreements with contractors. In order to
28 establish the direct relation between the salaries, wages, and
29 related costs of agency staff, the services provided through
30 interagency agreements or agreements with contractors and
31 affordable housing assisted with the fund, the agency shall
32 maintain records that document the salaries, wages, related costs,
33 time spent, and substance of the activity on each affordable
34 housing development by each employee, agency, or contractor
35 compensated by the fund.

36 (B) Costs incurred by a nonprofit corporation that are not
37 directly attributable to a specific project.

38 (2) Legal, architectural, and engineering costs and other
39 salaries, wages, and costs directly related to the planning and
40 execution of a specific project that are authorized under Section

1 33334.2 or Section 33334.2b and that are incurred by a housing
2 developer are not planning and administrative costs for the
3 purposes of this section, but are instead project costs.

4 (f) (1) The requirements of this subdivision apply to all new
5 or substantially rehabilitated housing units developed or
6 otherwise assisted, with moneys from the Low and Moderate
7 Income Housing Fund, pursuant to an agreement approved by an
8 agency on or after January 1, 1988. Except to the extent a longer
9 period of time may be required by other provisions of law, the
10 agency shall require that housing units subject to this subdivision
11 shall remain available at affordable housing cost to, and occupied
12 by, persons and families of low or moderate income and very low
13 income and extremely low income households for the longest
14 feasible time, but for not less than the following periods of time:

15 (A) Fifty-five years for rental units. However, the agency may
16 replace rental units with equally affordable and comparable
17 rental units in another location within the community if (A) the
18 replacement units are available for occupancy prior to the
19 displacement of any persons and families of low or moderate
20 income residing in the units to be replaced and (B) the
21 comparable replacement units are not developed with moneys
22 from the Low and Moderate Income Housing Fund.

23 (B) Forty-five years for owner-occupied units. However, the
24 agency may permit sales of owner-occupied units prior to the
25 expiration of the 45-year period for a price in excess of that
26 otherwise permitted under this subdivision pursuant to an
27 adopted program which protects the agency's investment of
28 moneys from the Low and Moderate Income Housing Fund,
29 including, but not limited to, an equity sharing program which
30 establishes a schedule of equity sharing that permits retention by
31 the seller of a portion of those excess proceeds based on the
32 length of occupancy. The remainder of the excess proceeds of the
33 sale shall be allocated to the agency and deposited in the Low
34 and Moderate Income Housing Fund. Only the units originally
35 assisted by the agency shall be counted towards the agency's
36 obligations under Section 33413.

37 (C) If land on which those dwelling units are located is deleted
38 from the project area, the agency shall continue to require that
39 those units remain affordable as specified in this subdivision.

(2) The agency shall require the recording in the office of the county recorder of covenants or restrictions implementing this subdivision for each parcel, lot, or unit of real property subject to this subdivision. Notwithstanding any other provision of law, the covenants or restrictions shall run with the land and shall be enforceable, against the original owner and each successor in interest, by the agency, the community, or any interested party, including, but not limited to, any person or family of low or moderate income that is eligible to reside at the parcel, lot, or unit of real property, or that is displaced or threatened with displacement from the parcel, lot, or unit of real property that is subject to the covenants or restrictions. The agency shall obtain and maintain a copy of the recorded covenants or restrictions for at least the life of the covenants or restrictions.

(3) Simultaneous to the recordation of the covenants or restrictions, the agency shall also record a request for notification of any resale of the real property for the life of the covenants or restrictions and shall obtain and maintain a copy of the recorded request for notification for at least the life of the covenants or restrictions.

(g) “Housing,” as used in this section, includes residential hotels, as defined in subdivision (k) of Section 37912. The definitions of “lower income households,” “very low income households,” and “extremely low income households” in Sections 50079.5, 50105, and 50106 shall apply to this section. “Longest feasible time,” as used in this section, includes, but is not limited to, unlimited duration.

(h) “Increasing, improving, and preserving the community’s supply of low- and moderate-income housing,” as used in this section and in Section 33334.2, includes the preservation of rental housing units assisted by federal, state, or local government on the condition that units remain affordable to, and occupied by, low- and moderate-income households, including extremely low and very low income households, for the longest feasible time, but not less than 55 years, beyond the date the subsidies and use restrictions could be terminated and the assisted housing units converted to market rate rentals. In preserving these units the agency shall require that the units remain affordable to, and occupied by, persons and families of low- and moderate-income and extremely low and very low

1 income households for the longest feasible time but not less than
2 55 years. However, the agency may replace rental units with
3 equally affordable and comparable rental units in another
4 location within the community if the following conditions are
5 met:

6 (1) The replacement units in another location are available for
7 occupancy prior to the displacement of any persons and families
8 of low or moderate income residing in the units to be replaced.

9 (2) The persons and families of low or moderate income that
10 are displaced are given a right of first refusal to occupy the
11 replacement units.

12 (3) The comparable replacement units are not developed with
13 moneys from the Low and Moderate Income Housing Fund.

14 (i) Funds from the Low and Moderate Income Housing Fund
15 shall not be used to the extent that other reasonable means of
16 private or commercial financing of the new or substantially
17 rehabilitated units at the same level of affordability and quantity
18 are reasonably available to the agency or to the owner of the
19 units. Prior to the expenditure of funds from the Low and
20 Moderate Income Housing Fund for new or substantially
21 rehabilitated housing units, where those funds will exceed 50
22 percent of the cost of producing the units, the agency shall find,
23 based on substantial evidence, that the use of the funds is
24 necessary because the agency or owner of the units has made a
25 good faith attempt but been unable to obtain commercial or
26 private means of financing the units at the same level of
27 affordability and quantity.

28 ~~SEC. 5. Section 33334.4 of the Health and Safety Code is~~
29 ~~amended to read:~~

30 ~~33334.4. (a) (1) Except as specified in subdivision (d), each~~
31 ~~agency shall expend over each 10-year period of the~~
32 ~~implementation plan, as specified in clause (iii) of subparagraph~~
33 ~~(A) of paragraph (2) of subdivision (a) of Section 33490, the~~
34 ~~moneys in the Low and Moderate Income Housing Fund to assist~~
35 ~~in making available housing units that are affordable to, and~~
36 ~~occupied by, extremely low income, very low income,~~
37 ~~low-income, and moderate-income persons, subject to the~~
38 ~~following:~~

39 ~~(A) At least 25 percent of the units are affordable to, and~~
40 ~~occupied by extremely low income persons.~~

~~(B) At least an additional 25 percent of the units are affordable to, and occupied by, very low income persons.~~

~~(2) This section does not prevent an agency from expending more of the moneys in the Low and Moderate Income Housing Fund to assist units that are affordable to, and occupied by, extremely low and very low income persons than is expended to assist units that are affordable to, and occupied by, low- and moderate-income persons.~~

~~(b) Each agency shall expend over the duration of each redevelopment implementation plan, the moneys in the Low and Moderate Income Housing Fund to assist housing that is available to all persons regardless of age in at least the same proportion as the number of low-income households with a member under age 65 years bears to the total number of low-income households of the community as reported in the most recent census of the United States Census Bureau.~~

~~(c) An agency that has deposited in the Low and Moderate Income Housing Fund over the first five years of the period of an implementation plan an aggregate that is less than two million dollars (\$2,000,000) shall have an extra five years to meet the requirements of this section.~~

~~SEC. 6. Section 33334.6 of the Health and Safety Code is amended to read:~~

~~33334.6. (a) The Legislature finds and declares that the provision of housing is itself a fundamental purpose of the Community Redevelopment Law and that a generally inadequate statewide supply of decent, safe, and sanitary housing affordable to persons and families of low or moderate income, as defined by Section 50093, threatens the accomplishment of the primary purposes of the Community Redevelopment Law, including job creation, attracting new private investments, and creating physical, economic, social, and environmental conditions to remove and prevent the recurrence of blight. The Legislature further finds and declares that the provision and improvement of affordable housing, as provided by Section 33334.2, outside of redevelopment project areas can be of direct benefit to those projects in assisting the accomplishment of project objectives whether or not those redevelopment projects provide for housing within the project area. The Legislature finds and determines that the provision of affordable housing by redevelopment agencies~~

1 and the use of taxes allocated to the agency pursuant to
2 subdivision (b) of Section 33670 is of statewide benefit and of
3 particular benefit and assistance to all local governmental
4 agencies in the areas where the housing is provided.

5 (b) This section is applicable to all project areas, or portions of
6 project areas, which are not subject to Section 33334.2 or
7 33334.2b, except that a project area, or portion of a project area,
8 for which a resolution was adopted pursuant to subdivision (i) of
9 Section 33334.2 is subject to this section. Project areas subject to
10 this section which are merged are subject to the requirements of
11 both this section and Section 33487. The deposit of taxes into the
12 Low and Moderate Income Housing Fund in compliance with
13 either this section or Section 33487 shall satisfy the requirements
14 of both sections in the year those taxes are deposited.

15 (c) Except as otherwise permitted by subdivisions (d) and (e),
16 not less than 20 percent of the taxes allocated to the agency
17 pursuant to Section 33670 from project areas specified in
18 subdivision (b) for the 1985-86 fiscal year and each succeeding
19 fiscal year shall be deposited into the Low and Moderate Income
20 Housing Fund established pursuant to Section 33334.3 and used
21 for the purposes set forth in Section 33334.2, unless the agency,
22 by resolution, makes one of the findings described in paragraphs
23 (1) to (3), inclusive, of subdivision (a) of Section 33334.2, except
24 that the authority to make the finding specified in paragraph (3)
25 of subdivision (a) of that section shall expire as specified in that
26 paragraph. Subdivisions (b) and (e) of Section 33334.2 apply if
27 an agency makes any of those findings.

28 (d) In any fiscal year, the agency may deposit less than the
29 amount required by subdivision (c) into the Low and Moderate
30 Income Housing Fund if the agency finds that the difference
31 between the amount deposited and the amount required by
32 subdivision (c) is necessary to make payments under existing
33 obligations of amounts due or required to be committed, set
34 aside, or reserved by the agency during that fiscal year and which
35 are used by the agency for that purpose. For purposes of this
36 section, "existing obligations" means the principal of, and
37 interest on, loans, moneys advanced to, or indebtedness (whether
38 funded, refunded, assumed, or otherwise) incurred by the agency
39 to finance or refinance, in whole or in part, any redevelopment
40 project existing on, and created prior to January 1, 1986, and

~~1 contained on the statement of existing obligations adopted
2 pursuant to subdivision (f). Obligations incurred on or after
3 January 1, 1986, shall be deemed existing obligations for
4 purposes of this section if the net proceeds are used to refinance
5 existing obligations contained on the statement.~~

~~6 (e) In each fiscal year prior to July 1, 1996, the agency may
7 deposit less than the amount required by subdivisions (c) and (d)
8 into the Low and Moderate Income Housing Fund if the agency
9 finds that the deposit of less than the amount required by those
10 subdivisions is necessary in order to provide for the orderly and
11 timely completion of public and private projects, programs, or
12 activities approved by the agency prior to January 1, 1986, which
13 are contained on the statement of existing programs adopted
14 pursuant to subdivision (f). Approval of these projects, programs,
15 and activities means approval by the agency of written
16 documents which demonstrate an intent to implement a specific
17 project, program, or activity and is not limited to final approval
18 of a specific project, program, or activity.~~

~~19 (f) Any agency which deposits less than the amount required
20 by subdivision (c) into the Low and Moderate Income Housing
21 Fund pursuant to subdivision (d) or (e) shall adopt prior to
22 September 1, 1986, by resolution, after a noticed public hearing,
23 a statement of existing obligations or a statement of existing
24 programs, or both.~~

~~25 (1) The agency shall prepare and submit the proposed
26 statement to the legislative body and to the Department of
27 Housing and Community Development prior to giving notice of
28 the public hearing. Notice of the time and place of the public
29 hearing shall be transmitted to the Department of Housing and
30 Community Development at least 15 days prior to the public
31 hearing and notice of the time and place of the public hearing
32 shall be published in a newspaper of general circulation in the
33 community once a week for at least two successive weeks prior
34 to the public hearing. The legislative body shall maintain a record
35 of the public hearing.~~

~~36 (2) A copy of the resolution adopted by the agency, together
37 with any amendments to the statement of the agency, shall be
38 transmitted to the Department of Housing and Community
39 Development within 10 days following adoption of the resolution
40 by the agency.~~

1 ~~(3) A statement of existing obligations shall describe each~~
2 ~~existing obligation and, based upon the best available~~
3 ~~information, as determined by the agency, list the total amount of~~
4 ~~the existing obligation, the annual payments required to be made~~
5 ~~by the agency pursuant to the existing obligation, and the date the~~
6 ~~existing obligation will be discharged in full.~~

7 ~~(4) A statement of existing programs shall list the specific~~
8 ~~public and private projects, programs, or activities approved prior~~
9 ~~to January 1, 1986, which are necessary for the orderly~~
10 ~~completion of the redevelopment plan as it existed on January 1,~~
11 ~~1986. No project, program, or activity shall be included on the~~
12 ~~statement of existing programs unless written evidence of the~~
13 ~~existence and approval of the project, program, or activity prior~~
14 ~~to January 1, 1986, is attached to the statement of existing~~
15 ~~programs.~~

16 ~~(g) If, pursuant to subdivision (d) or (e), the agency deposits~~
17 ~~less than 20 percent of the taxes allocated to the agency pursuant~~
18 ~~to Section 33670 in the 1985-86 fiscal year or any subsequent~~
19 ~~fiscal year in the Low and Moderate Income Housing Fund, the~~
20 ~~amount equal to the difference between 20 percent of the taxes~~
21 ~~allocated to the agency pursuant to Section 33670 for each~~
22 ~~affected project and the amount deposited that year shall~~
23 ~~constitute a deficit of the project. The agency shall adopt a plan~~
24 ~~to eliminate the deficit in subsequent years as determined by the~~
25 ~~agency.~~

26 ~~(h) The obligations imposed by this section, including deficits,~~
27 ~~if any, created under this section, are hereby declared to be an~~
28 ~~indebtedness of the redevelopment project to which they relate,~~
29 ~~payable from taxes allocated to the agency pursuant to Section~~
30 ~~33670, and shall constitute an indebtedness of the agency with~~
31 ~~respect to the redevelopment project until paid in full.~~

32 ~~(i) In any litigation to challenge or attack a statement of~~
33 ~~existing obligations, the decision by the agency after the public~~
34 ~~hearing to include an existing obligation on the statement of~~
35 ~~existing obligations, or the decision by the agency after the~~
36 ~~public hearing to include a project, program, or activity on the~~
37 ~~statement of existing programs, the court shall uphold the action~~
38 ~~of the agency unless the court finds that the agency has abused its~~
39 ~~discretion. The Legislature finds and declares that this standard~~
40 ~~of review is necessary in order to protect against the possible~~

1 impairment of existing obligations, programs, and activities
2 because agencies with project areas adopted prior to January 1,
3 1977, have incurred existing obligations and have adopted
4 projects, programs, and activities with the authority to receive
5 and pledge the entire allocation of funds authorized by Section
6 33670.

7 SEC. 7. Section 33413 of the Health and Safety Code is
8 amended to read:

9 33413. (a) Whenever dwelling units housing persons and
10 families of low or moderate income are destroyed or removed
11 from the low- and moderate-income housing market by the
12 agency or community, as defined in Section 33002, as part of a
13 redevelopment project or as part of a redevelopment project that
14 is subject to a written agreement with the agency or where
15 financial assistance has been provided by the agency, the agency
16 shall, within four years of the destruction or removal,
17 rehabilitate, develop, or construct, or cause to be rehabilitated,
18 developed, or constructed, for rental or sale to persons and
19 families of low or moderate income, an equal number of
20 replacement dwelling units that have an equal or greater number
21 of bedrooms as those destroyed or removed units at affordable
22 housing costs within the territorial jurisdiction of the agency.
23 When dwelling units are destroyed or removed after September
24 1, 1989, 75 percent of the replacement dwelling units shall
25 replace dwelling units available at affordable housing cost in the
26 same or a lower income level of very low income households,
27 lower income households, and persons and families of low and
28 moderate income, as the persons displaced from those destroyed
29 or removed units. When dwelling units are destroyed or removed
30 on or after January 1, 2002, 100 percent of the replacement
31 dwelling units shall be available at affordable housing cost to
32 persons in the same or a lower income level (extremely low, very
33 low, low, or moderate), as the persons displaced from those
34 destroyed or removed units. If the income level of the displaced
35 household is not verified by or otherwise known by the agency,
36 the household shall be presumed to be extremely low income.

37 (b) (1) Prior to the time limit on the effectiveness of the
38 redevelopment plan established pursuant to Sections 33333.2,
39 33333.6, and 33333.10 at least 30 percent of all new and
40 substantially rehabilitated dwelling units developed by an agency

1 shall be available at affordable housing cost to, and occupied by,
2 persons and families of low or moderate income. Not less than 50
3 percent of the dwelling units required to be available at
4 affordable housing cost to, and occupied by, persons and families
5 of low or moderate income shall be available at affordable
6 housing cost to, and occupied by, very low income households.

7 (2) (A) (i) Prior to the time limit on the effectiveness of the
8 redevelopment plan established pursuant to Sections 33333.2,
9 33333.6, and 33333.10 at least 15 percent of all new and
10 substantially rehabilitated dwelling units developed within a
11 project area under the jurisdiction of an agency by public or
12 private entities or persons other than the agency shall be
13 available at affordable housing cost to, and occupied by, persons
14 and families of low or moderate income. Not less than 40 percent
15 of the dwelling units required to be available at affordable
16 housing cost to, and occupied by, persons and families of low or
17 moderate income shall be available at affordable housing cost to,
18 and occupied by, very low income households.

19 (ii) To satisfy this paragraph, in whole or in part, the agency
20 may cause, by regulation or agreement, to be available, at
21 affordable housing cost, to, and occupied by, persons and
22 families of low or moderate income or to very low income
23 households, as applicable, two units outside a project area for
24 each unit that otherwise would have been required to be available
25 inside a project area.

26 (iii) On or after January 1, 2002, as used in this paragraph and
27 in paragraph (1), “substantially rehabilitated dwelling units”
28 means all units substantially rehabilitated, with agency
29 assistance. Prior to January 1, 2002, “substantially rehabilitated
30 dwelling units” shall mean substantially rehabilitated multifamily
31 rented dwelling units with three or more units regardless of
32 whether there is agency assistance, or substantially rehabilitated,
33 with agency assistance, single-family dwelling units with one or
34 two units.

35 (iv) As used in this paragraph and in paragraph (1),
36 “substantial rehabilitation” means rehabilitation, the value of
37 which constitutes 25 percent of the after rehabilitation value of
38 the dwelling, inclusive of the land value.

39 (v) To satisfy this paragraph, the agency may aggregate new
40 or substantially rehabilitated dwelling units in one or more

1 project areas, if the agency finds, based on substantial evidence,
2 after a public hearing, that the aggregation will not cause or
3 exacerbate racial, ethnic, or economic segregation.

4 ~~(B) To satisfy the requirements of paragraph (1) and~~
5 ~~subparagraph (A), the agency may purchase, or otherwise acquire~~
6 ~~or cause by regulation or agreement the purchase or other~~
7 ~~acquisition of, long-term affordability covenants on multifamily~~
8 ~~units that restrict the cost of renting or purchasing those units that~~
9 ~~either: (i) are not presently available at affordable housing cost to~~
10 ~~persons and families of low or very low income households, as~~
11 ~~applicable; or (ii) are units that are presently available at~~
12 ~~affordable housing cost to this same group of persons or families,~~
13 ~~but are units that the agency finds, based upon substantial~~
14 ~~evidence, after a public hearing, cannot reasonably be expected~~
15 ~~to remain affordable to this same group of persons or families.~~

16 ~~(C) To satisfy the requirements of paragraph (1) and~~
17 ~~subparagraph (A), the long-term affordability covenants~~
18 ~~purchased or otherwise acquired pursuant to subparagraph (B)~~
19 ~~shall be required to be maintained on dwelling units at affordable~~
20 ~~housing cost to, and occupied by, persons and families of low or~~
21 ~~very low income, for the longest feasible time but not less than~~
22 ~~55 years for rental units and 45 years for owner-occupied units.~~
23 ~~Not more than 50 percent of the units made available pursuant to~~
24 ~~paragraph (1) and subparagraph (A) may be assisted through the~~
25 ~~purchase or acquisition of long-term affordability covenants~~
26 ~~pursuant to subparagraph (B). Not less than 50 percent of the~~
27 ~~units made available through the purchase or acquisition of~~
28 ~~long-term affordability covenants pursuant to subparagraph (B)~~
29 ~~shall be available at affordable housing cost to, and occupied by,~~
30 ~~very low income households.~~

31 ~~(3) The requirements of this subdivision shall apply~~
32 ~~independently of the requirements of subdivision (a). The~~
33 ~~requirements of this subdivision shall apply, in the aggregate, to~~
34 ~~housing made available pursuant to paragraphs (1) and (2),~~
35 ~~respectively, and not to each individual case of rehabilitation,~~
36 ~~development, or construction of dwelling units, unless an agency~~
37 ~~determines otherwise.~~

38 ~~(4) Each redevelopment agency, as part of the implementation~~
39 ~~plan required by Section 33490, shall adopt a plan to comply~~
40 ~~with the requirements of this subdivision for each project area.~~

1 The plan shall be consistent with, and may be included within,
2 the community's housing element. The plan shall be reviewed
3 and, if necessary, amended at least every five years in
4 conjunction with either the housing element cycle or the plan
5 implementation cycle. The plan shall ensure that the
6 requirements of this subdivision are met every 10 years. If the
7 requirements of this subdivision are not met by the end of each
8 10-year period, the agency shall meet these goals on an annual
9 basis until the requirements for the 10-year period are met. If the
10 agency has exceeded the requirements within the 10-year period,
11 the agency may count the units that exceed the requirement in
12 order to meet the requirements during the next 10-year period.
13 The plan shall contain the contents required by paragraphs (2);
14 (3), and (4) of subdivision (a) of Section 33490.

15 (e) (1) The agency shall require that the aggregate number of
16 replacement dwelling units and other dwelling units rehabilitated,
17 developed, constructed, or price-restricted pursuant to
18 subdivision (a) or (b) remain available at affordable housing cost
19 to, and occupied by, persons and families of low-income,
20 moderate-income, and very low income households, respectively,
21 for the longest feasible time, but for not less than 55 years for
22 rental units and 45 years for home ownership units, except as set
23 forth in paragraph (2).

24 (2) Notwithstanding paragraph (1), the agency may permit
25 sales of owner-occupied units prior to the expiration of the
26 45-year period established by the agency for a price in excess of
27 that otherwise permitted under this subdivision pursuant to an
28 adopted program that protects the agency's investment of
29 moneys from the Low and Moderate Income Housing Fund,
30 including, but not limited to, an equity sharing program that
31 establishes a schedule of equity sharing that permits retention by
32 the seller of a portion of those excess proceeds, based on the
33 length of occupancy. The remainder of the excess proceeds of the
34 sale shall be allocated to the agency, and deposited into the Low
35 and Moderate Income Housing Fund. The agency shall, within
36 three years from the date of sale of units pursuant to this
37 paragraph, expend funds to make affordable an equal number of
38 units at the same income level as units sold pursuant to this
39 paragraph. Only the units originally assisted by the agency shall

1 be counted towards the agency's obligations under Section
2 33413.

3 (3) The requirements of this section shall be made enforceable
4 in the same manner as provided in paragraph (2) of subdivision
5 (f) of Section 33334.3.

6 (4) If land on which the dwelling units required by this section
7 are located is deleted from the project area, the agency shall
8 continue to require that those units remain affordable as specified
9 in this subdivision.

10 (d) (1) This section applies only to redevelopment projects for
11 which a final redevelopment plan is adopted pursuant to Article 5
12 (commencing with Section 33360) on or after January 1, 1976,
13 and to areas that are added to a project area by amendment to a
14 final redevelopment plan adopted on or after January 1, 1976. In
15 addition, subdivision (a) shall apply to any other redevelopment
16 project with respect to dwelling units destroyed or removed from
17 the low- and moderate-income housing market on or after
18 January 1, 1996, irrespective of the date of adoption of a final
19 redevelopment plan or an amendment to a final redevelopment
20 plan adding areas to a project area. Additionally, any agency
21 may, by resolution, elect to make all or part of the requirements
22 of this section applicable to any redevelopment project of the
23 agency for which the final redevelopment plan was adopted prior
24 to January 1, 1976. In addition, subdivision (b) shall apply to
25 redevelopment plans adopted prior to January 1, 1976, for which
26 an amendment is adopted pursuant to Section 33333.10, except
27 that subdivision (b) shall apply to those redevelopment plans
28 prospectively only so that the requirements of subdivision (b)
29 shall apply only to new and substantially rehabilitated dwelling
30 units for which the building permits are issued on or after the
31 date that the ordinance adopting the amendment pursuant to
32 Section 33333.10 becomes effective.

33 (2) An agency may, by resolution, elect to require that
34 whenever dwelling units housing persons or families of low or
35 moderate income are destroyed or removed from the low- and
36 moderate-income housing market as part of a redevelopment
37 project, the agency shall replace each dwelling unit with up to
38 three replacement dwelling units pursuant to subdivision (a).

39 (e) Except as otherwise authorized by law, this section does
40 not authorize an agency to operate a rental housing development

1 beyond the period reasonably necessary to sell or lease the
2 housing development.

3 (f) Notwithstanding subdivision (a), the agency may replace
4 destroyed or removed dwelling units with a fewer number of
5 replacement dwelling units if the replacement dwelling units
6 meet both of the following criteria:

7 (1) The total number of bedrooms in the replacement dwelling
8 units equals or exceeds the number of bedrooms in the destroyed
9 or removed units. Destroyed or removed units having one or no
10 bedroom are deemed for this purpose to have one bedroom.

11 (2) The replacement units are affordable to and occupied by
12 the same income level of households as the destroyed or removed
13 units.

14 (g) "Longest feasible time," as used in this section, includes,
15 but is not limited to, unlimited duration.